

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ROGER A. WARREN,

11 Plaintiff,

12 v.

13 FEDERAL HOME LOAN MORTGAGE  
14 CORPORATION, its assignees and/or  
15 successors, QUALITY LOAN SERVICE  
16 CORPORATION, BANK OF AMERICA  
17 HOME LOANS, BANK OF AMERICA,  
18 N.A., COUNTRYWIDE HOME  
19 LOANS, FIRST LINE RESIDENTIAL,  
20 INC., AND DOES 1-1000,

21 Defendants.

Civil No. 13cv0617 JAH(MDD)

**ORDER DENYING PLAINTIFF'S  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER  
[DOCS. # 9, 10]**

22 Plaintiff, appearing *pro se*, has filed a document entitled "Notice of Motion and  
23 Motion in Opposition to Fraudulent Filing of Unlawful Detainer ..." [doc. # 10] along  
24 with an application for an order shortening time [doc. # 9], collectively which this Court  
25 construes as an application for a temporary restraining order. Specifically, plaintiff seeks  
26 this Court's order enjoining further proceedings in an unlawful detainer action pending  
27 against plaintiff in California Superior Court. *See* Doc. # 9 at 1-2; Doc. # 10 at 22.

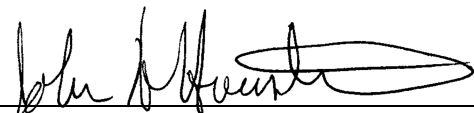
28 Temporary restraining orders are governed by Rule 65 of the Federal Rules of Civil  
Procedure and are subject to the same standard for issuing a preliminary injunction. *See*  
Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839, n. 7 (9th Cir. 2001);  
Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co., 887 F.Supp. 1320, 1323

(N.D.Cal. 1995). A party seeking a preliminary injunction must show “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor and that an injunction is in the public interest.” Winter v. Natural Resources Defense Council, Inc., 129 S.Ct. 365, 374 (2008). The Ninth Circuit Court of Appeal has determined that its “serious questions” sliding scale test, which permits one element to offset a weaker one, is still viable after the four-part element test provided in Winter. See Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134 -35 (9th Cir. 2011). Therefore, a preliminary injunction may issue if the plaintiff demonstrates serious questions going to the merits and that the balance of hardships tip sharply in his favor, “so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” Id. at 1135. However, “a preliminary injunction may be denied on the sole ground that the plaintiff failed to raise even “serious questions” going to the merits.” Vanguard Outdoor, LLC v. City of Los Angeles, 648 F.3d 737, 739-40 (9th Cir. 2011).

This Court finds it is prevented from intervening in a state court unlawful detainer action by the Anti-Injunction Act. The Act “is an absolute prohibition against enjoining state court proceedings, unless the injunction falls within one of [the] three specifically defined exceptions.” Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 26 (1970). The three exceptions are narrowly construed, and “doubts as to the propriety of a federal injunction against a state court proceeding should be resolved in favor of permitting the state action to proceed.” Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987). A number of district court have found that a stay of unlawful detainer proceedings does not fall into one of the exceptions listed in the Act. See, e.g., Diaz v. National City Bank, 2012 WL 2129916 at \*2 (S.D. Cal. June 12, 2012); Carrasco v. HSBC Bank USA, N.A., 2012 WL 646251 at \*3-4 (N.D. Cal. Feb. 28, 2012); Sato v. Wachovia Mortgage, FSB, 2012 WL 368423 at \*2 (N.D. Cal. Feb. 3, 2012). Plaintiff claims, among other things, that the state court action was fraudulently filed. See Doc. 10 at 1-2. Plaintiff may pursue that argument in state court,

1 but the Anti-Injunction Act prevents this Court's intervention. Accordingly, plaintiff's  
2 application for a temporary restraining order [docs. # 9, 10] is **DENIED**.

3  
4 Dated: April 5, 2013

5   
6 \_\_\_\_\_  
7 JOHN A. HOUSTON  
8 United States District Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28